IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No. 1715 of 1998

For Approval and Signature:

HONOURABLE MR.JUSTICE P.B.MAJMUDAR

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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GUJARAT AGRICULTURE UNIVERCITY
Versus
YADUNANDAN CONSTRUCTION CO.

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Appearance :
MR JR NANAVATI for MR AR THACKER for Applicant.
MR ANSHIN H DESAI for Opponent.

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CORAM : HONOURABLE MR.JUSTICE P.B.MAJMUDAR

Date : 07/03/2006

ORAL JUDGMENT

By filing this revision application, the applicant, who is original defendant of Special Civil Suit No.123/1994 has challenged the order passed by the learned trial Judge below Exh.29 in the aforesaid suit. Said

suit is filed by respondent herein by way of a money suit to recover certain amount from the University in connection with the construction work carried out by the plaintiff. In the aforesaid suit, the present applicant – original defendant filed a written statement and prior to filing of written statement, he also submitted counter claim. In the aforesaid suit, present respondent – original plaintiff submitted an application at Exh.29 under Order 7, Rule 11 of Civil Procedure Code for rejection of counter claim on the ground that counter claim is barred by limitation and that it is required to be dismissed as it does not disclose any cause of action. After hearing both the sides, trial Court granted Exh.29 application with no order as to costs. Against that order, present applicant – original defendant has filed this revision application under Section 115 of Civil Procedure Code.

Mr.J.R.Nanavati, learned advocate for the applicant submitted that no specific order is passed by the trial Court stating that counter claim is rejected and since no consequential decree is drawn, the applicant is denied his right of challenging the said order by filing regular appeal. He submitted that any order passed under Order 7, Rule 11 of Civil Procedure Code regarding rejection of plaint is a decree and, therefore, it is appealable.

Mr.Anshin Desai, learned advocate for the respondent submitted that application given by the plaintiff at Exh.29 is allowed by the trial Court, meaning thereby, the counter claims is rejected. He, however, conceded that in operative portion of the order, it is not stated specifically that counter claim is rejected as per Order 7, Rule 11 of Civil Procedure Code.

In my view, reading the order it is clear that learned trial Judge wanted to reject the counter claim under Order 7, Rule 11 of Civil Procedure Code. However, the learned trial Judge has observed in the order “Thus, at this stage application of counter-claim made by the defendant is not maintainable.”

It is required to be noted that once the Court decide to reject the counter claim under Order 7, Rule 11 of Civil Procedure Code, that is the final stage and there was no need to write “at this stage” and it has created some confusion, otherwise the applicant could have preferred an appeal as it is an appealable order.

I find some substance in the argument of Mr.Nanavati that if a clear order was passed rejecting the counter claim of the applicant and if the decree was drawn accordingly, the applicant could have filed regular appeal against such order and by not passing such order, the applicant is deprived of his right of filing appeal.

Considering the said aspect of the matter, while maintaining the reasonings given by the trial Court at the time of deciding Exh.29 application, matter is sent back to the trial Court for passing a formal order for rejecting the counter claim by specifically observing that counter claim is rejected as per Order 7, Rule 11 of the Civil Procedure Code and, thereafter to draw appropriate decree so that the applicant can take appropriate proceedings as provided under the law for challenging said order. When appeal is maintainable against such order, normally Court would not like to interfere in its revisional jurisdiction. It is clarified that since appeal is provided against the order as aforesaid, this

Court has not expressed any opinion about the order of the trial Court. Both the sides have also agreed that no further hearing may be given to either of the parties as the matter is sent back only for a limited purpose of passing formal order.

After passing of such order and drawing of decree, it will be open for the applicant to take appropriate recourse as available to him under the law.

Under these circumstances, this revision application is allowed to the limited extent as stated herein above. Rule is made absolute accordingly with no order as to costs. Writ to be sent to the trial Court forthwith so that the trial Court may pass the order, as stated herein above, at the earliest and without any further delay. Record and proceedings may be sent back to the trial Court forthwith.

It is clarified that aforesaid order is passed more or less with the consensus of the parties.

At this stage, Mr.Nanavati, learned advocate for the applicant submitted that original defendant would like to prefer an application about the jurisdiction of the Court on the ground that suit is barred as per the Public Works Arbitration Tribunal. Mr.Desai, learned advocate for the respondent has vehemently and rightly opposed the request of Mr.Nanavati on the ground that such request cannot be considered in this revision application.

In case, any such application is preferred, it is for the concerned

Court to decide the same in accordance with law as this Court is not expected to say anything on this issue as it is not the subject matter in the present revision application.

(P.B.MAJMUDAR, J.)

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